

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 99-0203****Withholding Tax****For Tax Years 1995 through 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. Withholding—Nonresident Shareholders**

Authority: IC 6-3-4-13

Taxpayer protests the formula used to arrive at the apportionment factor for corporate withholding tax assessment.

STATEMENT OF FACTS

Taxpayer, a Kentucky S corporation, operates a farm in Indiana. There were two shareholders for the tax years in question. Those shareholders lived in Kentucky. The Department of Revenue conducted an investigation and issued assessments for corporate withholding taxes for nonresident shareholders. Taxpayer protested that the Department did not use a proper apportionment formula.

I. Withholding—Nonresident Shareholders**Discussion**

Taxpayer operates a farm in Indiana. The Department reviewed its records for the tax years in question and was unable to find any nonresident shareholder withholding tax remittances from taxpayer. Under IC 6-3-4-13, taxpayer is required to withhold Indiana adjusted gross income tax on distributions to all nonresident shareholders regardless of their individual filing requirement and status. IC 6-3-4-13 states in part:

- (a) Every corporation which is exempt from tax under IC 6-3 pursuant to IC 6-3-2-2.8(2) shall, at the time that it pays or credits amounts to any of its nonresident shareholders as dividends or as their share of the corporation's undistributed taxable income, withhold the amount

prescribed by the department. Such corporation so paying or crediting any nonresident shareholder:

- (1) shall be liable to the state of Indiana for the payment of the tax required to be withheld under this section and shall not be liable to such shareholder for the amount withheld and paid over in compliance or intended compliance with this section;

Taxpayer, an S-Corporation with Indiana income, failed to withhold taxes on distributions made to nonresident shareholders. Audit, therefore, made withholding tax adjustments based on returns filed by taxpayer. Taxpayer paid one third (1/3) of these assessments, but rather than contesting its withholding duties, taxpayer protested that the Department did not use the proper apportionment formula in determining these assessments. In the course of this protest, taxpayer submitted information relating to the apportionment formula used to determine the percentage of income and tax to be paid to Indiana.

In a letter to the Department accompanying some of the documentation submitted for this protest, taxpayer explained that it had paid tax to the Kentucky Revenue Cabinet on the income in question. Despite this, the withholding requirement of IC 6-3-4-13 does subject taxpayer to taxation in Indiana. Indiana cannot waive a valid tax on the basis that a taxpayer sent payment to another state.

Under IC 6-3-4-13, taxpayer is required to withhold Indiana adjusted gross income tax on distributions to nonresident shareholders. Taxpayer failed to withhold these taxes. However, the Audit division will review taxpayer's returns and the submitted documentation to determine taxpayer's proper Indiana apportionment factors.

FINDING

Taxpayer's protest is denied. The Audit division will review and verify the information related to income apportionment.